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Before the
FEDERAL COMMUNICATIONS COMMISSION
 DISPATCHED BY Washington, D.C. 20554

FCC 00M-17
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| In re Applications of |) | MM Docket No. 99-153 |
| |) | |
| READING BROADCASTING, INC. |) | File No. BPCT-940407KF |
| |) | |
| For Renewal of License of |) | |
| Station WTVE(TV), Channel 51 |) | |
| Reading, Pennsylvania |) | |
| |) | |
| and |) | |
| |) | |
| ADAMS COMMUNICATIONS CORPORATION |) | File No. BPCT-940630KG |
| |) | |
| For Construction Permit for a New |) | |
| Television Station to Operate on |) | |
| Channel 51, Reading, Pennsylvania |) | |

MEMORANDUM OPINION AND ORDER

Issued: February 16, 2000 Released: February 18, 2000

1. Motions to Compel were filed by the Enforcement Bureau ("Bureau") on February 7, 2000. Oppositions were filed by Reading Broadcasting, Inc. ("Reading") on February 11, 2000.

2. The rulings below relate to three interrogatories and one request for documents in connection with an issue added against Reading under Memorandum Opinion and Order FCC 99M-61, released October 15, 1999. The added issue is as follows:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

Interrogatories

3. The Interrogatories objected to are the following:

Interrogatory No. 5. Identify all persons who were present at Station KORC(TV), Anacortes, Washington, when it was inspected by the FCC personnel on April 27, 1987.

Reading objects on grounds of relevancy to the issue and asserts that because the request is for information of thirteen years duration, it is unduly burdensome.

Interrogatory No. 6. With respect to the construction of Station KORC(TV), Anacortes, Washington, identify all persons who determined that the antenna, its height above the average terrain, and its effective radiated power should differ from the facilities authorized in the station's construction permit.

Reading objects on grounds of relevancy and burdensomeness.

Interrogatory No. 7. Identify all persons who determined the substance of the wording used in the application of Mt. Baker for extension of its construction permit for Station KORC(TV), Anacortes, Washington (File No. BMPCT – 860701 KP); Mt. Baker's December 31, 1986, petition for reconsideration of the staff's December 5, 1986, denial of the referenced application; Mt. Baker's October 27, 1987, petition for reconsideration of the staff's cancellation of the construction permit; Mt. Baker's February 25, 1988, application for review; and Mt. Baker's September 6, 1988, petition for reconsideration of the Commission's Memorandum Opinion and Order, 3 FCC Rcd 4777, released August 5, 1988.

Reading objects on grounds of relevancy and burdensomeness.

4. The Bureau seeks the identification of persons who were present at Station KORC (TV) when it was inspected in April, 1987; of persons having information about the decision to change the height of the station's tower; and of persons who determined the substance of the challenged wording in disclosures to the Commission. Here the Bureau basically seeks nonburdensome identification of persons who may have relevant information. These categories of persons are likely to have relevant information about the construction at Mt. Baker, any changes to construction that may conflict with representations that were made to the Commission and related disclosures made or caused to be made by Parker in requests for assignments.

5. These interrogatories also are calculated to lead the Bureau to substantial information about Parker's role with respect to all of the operational and disclosure decisions and activities that relate to the added issue, including decisions to change construction plans and to not disclose adverse information on cancellation of the Mt. Baker permit in subsequent applications.

6. Reading argues that the information sought by the Bureau's interrogatories would revisit the investigation that underlies the Mt. Baker permit cancellation and would be in indirect violation of the Commission's ten year bar. Cf. Character Qualifications, 102 F.C.C. 2d 1179, 1229 (1986). That argument does not negate the need for the Bureau to obtain relevant discovery. Moreover, since the questioned disclosures were the subject of the added issues within ten years of the disclosures, there can be no obstruction of the Commission ten year bar through the Bureau's discovery.

7. In further argument, Reading refers to the Presiding Judge's comment that all parties were aware of the particulars of the adjudicated conduct in Mt. Baker and that hopefully that awareness would limit the evidence. See MO&O, supra. That language was not intended to limit the scope of discovery that is authorized by the Commission's rules for discovery. See 47 C.F.R. §311 (discovery may be used for the discovery of relevant facts for use at hearing). It was expected that familiarity with the subject matter might expedite discovery and encourage cooperation. But there was no limitation ever intended on authorized discovery.

8. To the extent that Reading may be inconvenienced by searching for responsive information, such inconvenience is inherent in litigation related discovery. But the scope and nature of the Bureau's interrogatories are not inordinately burdensome and the Bureau has expressed a willingness to allow for "a lack of memory and faulty memories." There is no apparent reason why Reading cannot provide substantially complete answers to the Bureau's interrogatories which primarily ask only for information on identification. It is expected that the deposition(s) will follow soon after the Bureau receives Reading's answers.

Documents

9. The production of documents objected to are the following:

Request for

Production No. 3.

All documents relating to the application of Mt. Baker Broadcasting Co., Inc. ("Mt. Baker") to extend the construction permit for Station KORC(TV), Anacortes, Washington (File No. BMPCT – 860701KP); the December 31, 1986, petition for reconsideration filed by Mt. Baker; the October 27, 1987, petition for reconsideration filed by Mt. Baker; the February 25,

1988, application for review filed by Mt. Baker; and the September 6, 1988, petition for reconsideration filed by Mt. Baker

Reading objects on grounds of relevancy and burdensomeness.

10. The Bureau argues that the documents that Reading objects to producing are relevant as to whether Micheal Parker lacked candor in disclosing Mt. Baker's permit cancellation in various applications. The Bureau argues that the applications reported only the cancellation but not the reason for the cancellation which was a deception that was attributed to Mr. Parker. Reading objects to the category of documents identified above on grounds that the documents were relevant to the Mt. Baker adjudication but are not relevant to the issue of adequate subsequent disclosures. Reading also argues that the request for documents relating to an event that occurred 13 years ago is a burdensome request.

11. It is true that the ultimate question under the added issue is the truth and completeness, i.e. candor of the disclosures of the Mt. Baker decision that Parker was responsible for disclosing in subsequent applications in which he sought Commission action based on his disclosures. The Bureau now seeks documents that are designed to ascertain Parker's knowledge of the facts and circumstances surrounding the Mt. Baker permit cancellation. Such documents appear calculated to show knowledge on the part of Mr. Parker and may be relevant proof of deceptive intent. The Bureau's document request is not an attempt to reopen a Mt. Baker investigation or adjudication. Nor is it an attempt to circumvent the Commission's policy against litigating facts that occurred over ten years ago. Cf. Character Qualifications, supra.

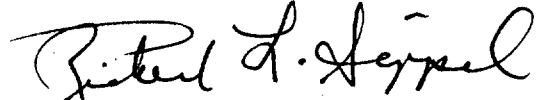
12. The Bureau will not be "estopped" from seeking transactional documents that contained relevant disclosures (or failures to disclose) on grounds of a comment by the Presiding Judge that it is only the completeness and accuracy of Parker's disclosures of the adjudications that are challenged by Adams, joined by the Bureau. See MO&O, supra. That comment was not intended and cannot fairly be construed to place a limit on focused document discovery. Also, an evident observation that the "parties are well aware of the particulars of the adjudicated misconduct and hopefully that will limit the evidence" should not bar the requested discovery. A comment by a trial judge that parties are familiar with evidence does not mean that the hearing record need not be complete. To the contrary, this record should leave no significant gap as far as relevant facts are concerned, particularly since the parties indeed are familiar with the event that was alleged to have been inadequately disclosed.

Order

Accordingly, IT IS ORDERED that the Motions To Compel that were filed by the Enforcement Bureau on February 7, 2000 ARE GRANTED.

IT IS FURTHER ORDERED that Reading Broadcasting, Inc. WILL COMPLY with this ruling by answering interrogatories **by February 22, 2000** and by producing documents **by February 28, 2000**.

FEDERAL COMMUNICATIONS COMMISSION¹

A handwritten signature in black ink, appearing to read "Richard L. Sippel", written in a cursive style.

Richard L. Sippel
Administrative Law Judge

¹ Copies of this ruling were e-mailed to counsel on date of issuance.